



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

200952064

SEP 30 2009

Uniform Issue List: 408.03-00

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XXXXXXXXXXXXXXXXXXXX  
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T:EP:RA:UK

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXXXXX  
Individual B = XXXXXXXXXXXXXXXXXXXXXXXX  
IRA X= XXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
Financial Institution M = XXXXXXXXXXXXXXXXXXXXXXXX  
Account Y = XXXXXXXXXXXXXXXXXXXXXXXX  
Amount D = XXXXXXXXXXXXXXXXXXXXXXXX  
Bank Z = XXXXXXXXXXXXXXXXXXXXXXXX  
Date 1 = XXXXXXXXXXXXXXXXXXXXXXXX  
Date 2 = XXXXXXXXXXXXXXXXXXXXXXXX  
Date 3 = XXXXXXXXXXXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXXXXX

This is in response to your letter dated March 13, 2007, and supplemented by letters dated September 11, 2007, August 19, 2008, and August 21, 2009, as submitted by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age 67, represents that she received a distribution from IRA X totaling Amount D. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the deteriorating physical and mental condition of her husband, Individual B, for whom she had become the sole caregiver. Taxpayer A further represents that Amount D has not been used for any other purpose.

Taxpayer A represents that on Date 1, she requested and received a distribution of Amount D from IRA X held by Financial Institution M. On Date 2, Amount D, was deposited into Account Y, a non-IRA account at Bank Z. During the period preceding the distribution and through the end of the 60-day rollover period Individual B was suffering from a variety of medical issues including gall bladder disease and cancer, as a result of which he underwent multiple medical treatments including various tests, an operation, radiation treatment and chemotherapy. He was also hospitalized during part of that time. During this time Taxpayer A was Individual B's sole non-institutional caregiver, and she was under considerable duress as a result of her husband's deteriorating health. Taxpayer A represents that in addition to Individual B's physical conditions, he was also suffering from increasing memory loss and was diagnosed with Alzheimer's shortly after the end of the 60-day rollover period.

Taxpayer A has provided documentation showing that Individual B was treated for these physical and mental health conditions during the period. Taxpayer A asserts that, as a result of Individual B's medical condition and Taxpayer A being his sole caregiver, Amount D was deposited into Account Y instead of a rollover IRA. Taxpayer A did not become aware that a timely rollover had not been made of Amount D until Date 3, while consulting with her tax accountant.

Based on the facts and representations, a ruling is requested that the Internal Revenue Service waive the 60-day rollover requirement with respect to the distribution of Amount D.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if:

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which he receives the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the one-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country, or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and, (4) the time elapsed since the distribution occurred.

The information and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover within the 60-day rollover period prescribed by section 408(d)(3) of the Code was due to the deterioration of Individual B's health and his hospitalization during the 60-day rollover period, and due to her increased responsibilities as his sole caregiver.

Therefore, pursuant to section 408(c)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA Y.

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Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file with this office.

If you wish to inquire about this ruling, please contact XXXXXXXXX, SE:T:EP:RA:T4, I.D. No. XXXXXXXX, at XXXXXXXXXXXXXXXXXXXXXXXX

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans, Technical Group 4

Enclosures:

Deleted Copy of Ruling Letter  
Notice of Intention to Disclose